

REMARKS/ARGUMENTS

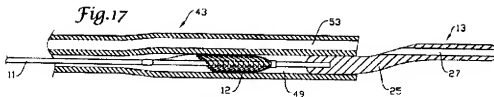
Applicants have received and carefully reviewed the Final Office Action mailed June 9, 2009. Currently, claims 1-28 and 31-46 remain pending of which claims 17-21 and 38-43 were previously withdrawn. Claims 1-16, 22-28, 31-37, and 44-46 have been rejected. No claim amendments are presented herein. Favorable consideration of the following remarks is respectfully requested.

Claim Rejections – 35 USC § 112

Claims 1-16, 22-28, 31-37, and 44-46 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner has asserted that the limitation found in independent claims 1 and 37 currently in question:

“wherein, when the embolic protection filter is collapsed in part within the distal sheath, a portion of the guidewire within the second lumen of the elongated tubular member adjacent the distal port of the second lumen is generally coplanar with a portion of the guidewire within the guidewire lumen of the guide tip, a portion of the elongated wire within the first lumen of the elongated tubular member adjacent the distal end of the first lumen, and the point of attachment of the elongated wire to the guide tip”

implies that the second lumen (53) of the elongated tubular member (43) is generally coplanar with the following elements: guidewire lumen (27) of the guide tip (13); the first lumen (49) of the elongated tubular member (43); and the point of attachment of the elongated wire (11) and the guide tip (13) and that the limitation is not supported in the originally filed specification. The Examiner has thoughtfully provided a reproduction of Figure 17 along with his assertion that the second lumen is not generally coplanar with the first lumen of the elongated tubular member or the point of attachment of the elongated wire to the guide tip. Applicants must respectfully disagree and point to the plane of the drawing in support of their position. Second lumen (53), first lumen (49), the point of attachment between elongated wire (11) and the guide tip (13), as well as guidewire lumen (27) of guide tip (13) certainly are coplanar and lie within the plane of cross-sectional Fig. 17 reproduced below.

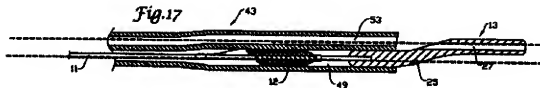


Applicants believe that the figure alone provides sufficient support for the claimed limitation; however the text at page 20, lines 12-15 provides additional support by indicating that second lumen (53) of elongated tubular member (43) may, if necessary, be aligned to achieve the coplanar arrangement depicted in Fig. 17 which allows the guidewire, when present, to pass from the second lumen of the elongated tubular member to the guidewire lumen of the guide tip as illustrated admirably by the Examiner's upper dashed line which parallels the lower dashed line in the first lumen of the elongated tubular member. Accordingly, Applicants respectfully request that the 35 U.S.C. 112, first paragraph rejection of claims 1-16, 22-28, 31-37, and 44-46 be withdrawn.

Response to "Response to Arguments"

In the Response to Arguments, the Examiner has maintained the position that second lumen 53 is only coplanar with guidewire lumen 27, and that second lumen 53 is not coplanar with first lumen 49 or the point of attachment of the elongated wire to the guide tip, stating that "Two lumens that are generally parallel cannot lie in the same plane, or they would not be parallel." Such a statement is blatantly, obviously, and stunningly false. Certainly there are instances within 3-D spatial geometry where parallel lines may not be coplanar, but to generally state that parallel lines cannot be coplanar is simply incorrect. In the current application, an arrangement of parallel lines (lumens) that are coplanar has been claimed.

The Examiner also referred to the following drawing, to which the Examiner has added generally parallel dashed lines through the lumens:



Applicants submit that the two dashed, parallel lines through the three lumens, as well as the point of attachment of wire 11 to tip 25, all reside in the plane of the paper (or computer screen) that the figure is shown on. Thus, they are all coplanar. Indeed, draw any two parallel lines on a piece of paper, and they must be coplanar within the plane of the paper. The claims have added a third lumen (or line) to this example, but it still applies. Draw three parallel lines on a single sheet of paper, and they are all coplanar within the plane of the paper. Applicants are baffled as to how this arrangement can be misunderstood, when it is the Examiner's own example that further proves the fact.

It appears that the Examiner may be making one of two errors in the interpretation of Figure 17. First, the Examiner may be arbitrarily selecting a plane that conflicts with the claim limitations and refusing to consider other selections. Perhaps the plane being considered is a plane through lumens 53 and 27 that is normal to the paper (or screen) – angled at 90 degrees to the paper/screen through an axis arranged in lumens 53 and 27. Applicants agree that all three lumens are not coplanar within this particular plane. However, one needs only to rotate such a plane 90 degrees along an axis through those two lumens to orient the plane in accordance with the claim limitations.

Secondly, it appears that the Examiner may be confusing the term coplanar with collinear or coaxial. Parallel lumens generally will not be collinear. However, they certainly can lie in the same plane, as illustrated above. The claims do not recite that the lumens are collinear or coaxial, and indeed the three lumens are not either, but the lumens are coplanar, as claimed.

Applicants respectfully request reconsideration and withdrawal of the rejection. If the Examiner persists in maintaining the rejection, perhaps a telephone interview with the undersigned attorney may be helpful in understanding the different perception of the claimed subject matter and advancing the application.

Conclusion

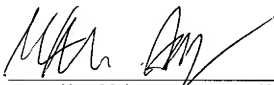
In view of the foregoing, all pending claims are believed to be in condition for allowance. Further examination and withdrawal of the rejections are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

AMR SALAHIEH et al.

By their Attorney,

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Glenn M. Seager, Reg. No. 36,926
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, Minnesota 55403-2420
Tel: (612) 677-9050